APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,562	01/04/2002	Keith L. Shippy	42390P12915	2307

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EXAMINER
SHANG, ANNAN Q

ART UNIT	PAPER NUMBER
2623	

DATE MAILED: 06/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	10/040,562	SHIPPY ET AL.
	Examiner	Art Unit	
	Annan Q. Shang	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>04 January 2002</u>.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-23</u> is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) <u>1-23</u> is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application (PTO-152)
6)☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for

all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2.   Claims 1-4, 8-11, 13, 17-18 and 20-21 are rejected under 35 U.S.C.

103(a) as being unpatentable over **Perlman et al (5,978,381)** in view of **Roberts et al**

(6,920,110).

As to claim 1, note the **Perlman** reference figures 1-2, discloses a transmitting

high bandwidth network content on a low bandwidth communications channel during off

peak hours (col.2, lines 51-67and further discloses a method of determining when to

update software of a client device (fig. 1A, Computer System 'CS' 100 or WebTV Client

180) comprising:

(WebTV Server 160/Remote Server 150 'WebTV-S' 160) Receiving client activity

data (usage patterns, col.6, lines 56-65 and col.7, line 63-col.8, line 44) from the client

device (WeTV-180 or 202, figs.1A-2B, col.3, line 1-6 and line 58-col.4, line 26), note the

WebTV-160 includes a memory with a plurality of accessible instructions and a

processor and software, acts as a proxy and provides WebTV clients 180 access to the

web and other WebTV Services and determines when to update content reception and

consumption software of clients devices 180; and

Perlman further teaches Updating software resident on the client device (col.9, lines 34-47) during off-peak hours of the day, where most client devices are in their idle state (col.6, lines 8-40, line 56-col.7, line 14, col.8, line 35-44 and col.13, lines 45-65).

Perlman fails to explicitly teach updating the software on the client device when the client activity data indicates activity less than a predetermined threshold for a selected period of time.

However, note the **Roberts** reference figures 1-7, discloses system and method for transferring data over a network, identifying a maximum monitoring level of actual utilization and updating the client software when the utilization is less than the threshold level of utilization (figs.2-3, col.7, lines 7-28, line 40-col.8, line 37 and line 48+).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teaching of Roberts into the system of Perlman in order to eliminate interference with other network activity or client activity.

As to claim 2, Perlman further discloses where the client activity data comprises information describing at least one of reception of content and consumption of content by the content by the client device (col.6, line 66-col.7, line 14, col.8, line 7-19 and col.13, lines 45-65).

As to claim 3, Perlman further discloses where the content comprises audio-visual content received over at least one of a broadcast network an a multicast network and content consumption comprises rendering the audio-visual content for reception by a user (col.6, line 66-col.7, line 14, col.8, line 7-19, col.10, lines 27-47 and col.13, lines 45-65).

As to claim 4, Perlman further comprising a billing database for the client device using the client activity data (col.6, lines 8-15, col.8, line 46-col.9, line 7, line 29 and col.13, line 15-25).

As to claim 8, the claimed "An article comprising: a storage medium having a plurality of machine accessible instructions..." is composed of the same structural elements that were discussed with respect to the rejection of claim 1.

Claim 9 is met as previously discussed with respect to claim 2.

Claim 10 is met as previously discussed with respect to claim 3.

Claim 11 is met as previously discussed with respect to claim 4.

Claim 12 is met as previously discussed with respect to claim 5.

As to claim 13, note the **Perlman** reference figures 1-2, discloses a transmitting high bandwidth network content on a low bandwidth communications channel during off peak hours and further discloses a method of determining when to update content reception and consumption software of client devices (Computer System 'CS' 100 or WebTV Client 180) in a client/server system (figs.1-2), comprising:

(WebTV Server 160/Remote Server 150 'WebTV-Ss' 150/160) Receiving client activity data (usage patterns, col.6, lines 56-65 and col.7, line 63-col.8, line 44) from client devices, (WeTV-180 or 202 figs.1A-2B, col.3, line 1-6 and line 58-col.4, line 26), the client activity data comprising information describing at least one of reception of content and consumption of content by each device (col.6, lines 8-40, line 66-col.7, line 14 and line 63-col.8, line 54), note the WebTV-160 includes a memory with a plurality of accessible instructions and a processor and software, acts as a proxy and provides

WebTV clients 180 access to the web and other WebTV Services and determines when

to update content reception and consumption software of clients devices 180;

(WebTV-Ss 150/160) Maintaining a billing database (col.5, lines 39-67, col.6,

lines 8-40, col.8, line 20-col.9, line 8 and col.13, lines 15-25) for the client devices using

the received client activity data (col.6, lines 8-40 and line 66-col.7, line 14);

(WebTV-Ss 150/160) Marking a client device in the billing database as eligible for

receiving updated content reception and consumption software; and downloading the

updated software to the marked client device for subsequent use in receiving and

consuming content, during off-peak hours of the day, where most client devices are in

their idle state (col.6, lines 8-40, line 56-col.7, line 22, line 49-col.8, line 44 and col.13,

lines 45-65).

Perlman fails to explicitly teach updating the software on the client device when

the client activity data indicates activity less than a predetermined threshold for a

selected period of time.

However, note the **Roberts** reference figures 1-7, discloses system and method

for transferring data over a network, identifying a maximum monitoring level of actual

utilization and updating the client software when the utilization is less than the threshold

level of utilization (figs.2-3, col.7, lines 7-28, line 40-col.8, line 37 and line 48+).

Therefore it would have been obvious to one of ordinary skill in the art at the time

of the invention to incorporate the teaching of Roberts into the system of Perlman in

order to eliminate interference with other network activity or client activity.

Claim 14 is met as previously discussed with respect to claim 5.

As to claim 17, Perlman further discloses where content comprises at least one

of a motion picture and a TV program (col.6, line 66-col.7, line 14, col.8, line 7-18).

As to claim 18, the claimed "An article comprising: a storage medium having a

plurality of machine accessible instructions..." is composed of the same structural

elements that were discussed with respect to the rejection of claim 13.

Claim 19 is met as previously discussed with respect to claim 5.

Claim 20 is met as previously discussed with respect to claim 17.

As to claim 21, note the **Perlman** reference figures 1-2, discloses a transmitting

high bandwidth network content on a low bandwidth communications channel during off

peak hours and further discloses a server (WebTV Server 160/Remote Server 150

'WebTV-Ss' 150/160) in a content distribution system (figs.1-2), comprising, the claimed

"A server..." is composed of the same structural elements that were discussed with

respect to the rejection of claim 13.

3.   Claims 5-7, 12, 14-16, 19 and 22-23 are rejected under 35 U.S.C. 103(a)

as being unpatentable over **Perlman et al (5,978,381)** in view of **Roberts et al**

(6,920,110), and further in view of **Tsukamoto et al (5,796,828)**.

As to claim 5, Perlman as modified by Roberts teach all the claimed limitations as

previously discussed with respect to claim 2 above and further teaches conditional

viewing restrictions, such as for-pay content including providing preview of the for-pay

content (col.13, lines 15-25), but fail to explicitly teach where the content is encrypted

and comprises information describing operations performed by the client device to decrypt the received content prior to consumption of the content by the client device.

However, note the Tsukamoto reference figures 1-6, discloses controlled-access broadcast signal receiving system where the received video signals are encrypted and comprises information describing operations performed by the client device to decrypt the received video signals prior to consumption of the video signals by the client receiving device (col.2, lines 32-49, col.3, lines 41-50, col.4, lines 4-40 and col.5, lines 5-40).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teaching of Tsukamoto into the system of Perlman as modified by Roberts to encrypt the content to allow selective restriction access to users to generate revenue for the service provider or the producer of the content.

As to claims 6-7, Perlman as modified by Roberts teach all the claimed limitations as previously discussed with respect to claim 1 above, but fail to explicitly teach the where the software resident on the client device comprises tamper resistant software and further updated client software comprises at least one of a new software configuration.

However, Tsukamoto further discloses where the software resident on the client device comprises tamper resistant software and further updated client software comprises at least one of a new software configuration (col.5, lines 5-40, col.6, line 27-col.7, line 19 and col.8, lines 17-30).

Therefore it would have been obvious to one of ordinary skill in the art at the time

of the invention to incorporate the teaching of Tsukamoto into the system of Perlman as

modified by Roberts to selective provide access to the receive content at each client

device and furthermore to selectively provide a new update software to each client

device at anytime if the client's status with respect to payment, usage, etc., changes.

As to claim 12, Perlman as modified by Roberts teaches all the claimed

limitations as previously discussed with respect to claim 9 above, but fail to explicitly

teach content encryption and decryption, which is met as previously discussed with

respect to claim 5.

As to claims 14-16, Perlman as modified by Roberts teach all the claimed

limitations as previously discussed with respect to claim 13 above, but fail to explicitly

teach content encryption and decryption and tamper resistant software resides within

the client device and updating with new tamper resistant software, which is met as

previously discussed with respect to claims 5-7.

As to claim 19, Perlman as modified by Roberts teach all the claimed limitations

as previously discussed with respect to claim 18 above, but fail to explicitly teach

content encryption and decryption, which is met as previously discussed with respect to

claim 5.

As to claims 22-23, Perlman as modified by Roberts teach all the claimed

limitations as previously discussed with respect to claim 21 above, but fails to explicitly

teach tamper resistant software resides within the client device and updating with new

tamper resistant software, which is met as previously discussed with respect to claims

5-7.

Conclusion

4.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure.

D'Souza et al (6,745,224) disclose object framework and services for periodically

recurring operations.

Cohn et al (6,704,773) disclose distributing data over a communications network

for display.

Wonfor et al (6,381,747) disclose method for controlling copy protection in digital
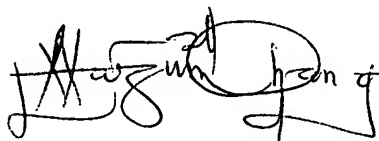
video networks.

Russo (5,619,247) discloses stored program pay-per-play.

5.   Any inquiry concerning this communication or earlier communications from

the examiner should be directed to **Annan Q. Shang** whose telephone number is **571-**

272-7355. The examiner can normally be reached on **700am-400pm**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, **Christopher S. Kelley** can be reached on **571-272-7331**. The fax phone

number for the organization where this application or proceeding is assigned is **571-**

273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the **Electronic Business Center (EBC) at 866-217-9197 (toll-free).**

Annan Q. Shang